

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1909.**

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**No. 139.**

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**SHEVLIN - CARPENTER COMPANY AND JOHN F.  
IRWIN, PLAINTIFFS IN ERROR,**

**vs.**

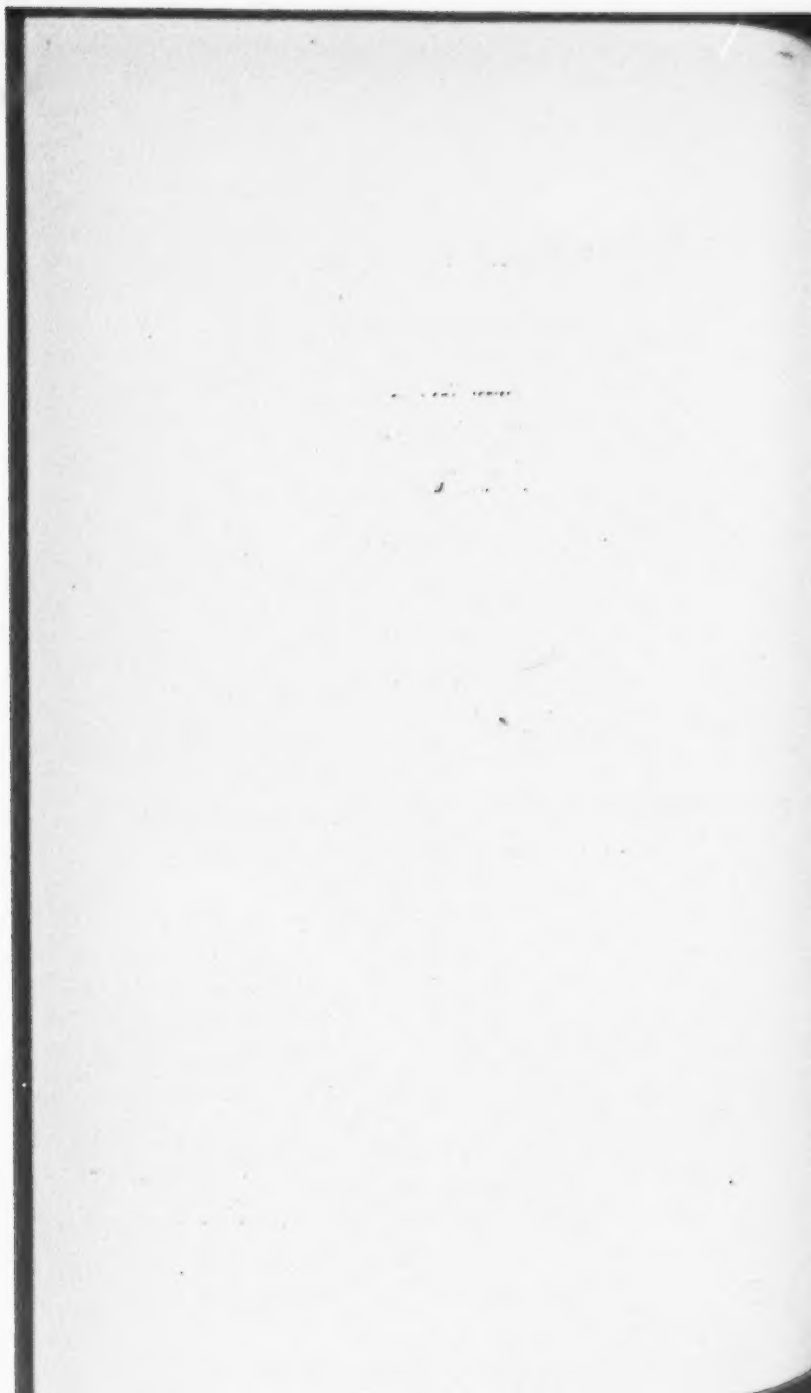
**STATE OF MINNESOTA, DEFENDANT IN ERROR.**

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**SUPPLEMENTAL BRIEF OF THE DEFENDANT  
IN ERROR.**

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**GEORGE T. SIMPSON,**  
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STATE OF MINNESOTA, DEFENDANT IN ERROR.

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That the position of the defendant in error may be clear upon the following proposition the State of Minnesota herewith respectfully submits the following supplemental brief:

The plaintiffs in error contend that there is double jeopardy here; that such double jeopardy under a State statute is in violation of the "due process" provision of the Fourteenth Amendment to the Constitution of the United States; and that hence the statute at bar is in violation of the Federal Constitution and may be so declared by this court.

In answer to this contention the position of the State is:

1. Double jeopardy under a State statute is not within the protection of the Fourteenth Amendment.

Twining *vs.* New Jersey, 211 U. S., 78.

"As I read the opinion of the court it will follow  
\* \* \* that the Fourteenth Amendment would be  
no obstacle whatever in the way of a State law \* \* \*

under which \* \* \* one accused of crime could be put in jeopardy twice." \* \* \*

Mr. Justice Harlan, dissenting, in *Twining vs. New Jersey*, *supra*, page 125.

And—

2. Double jeopardy is not here, because there never has been a criminal prosecution against the plaintiff in error on the facts in this case, and now there can never be such criminal prosecution because the statute of limitations has run.

*State vs. Buckman*, 95 Minn., 272.

*Lee vs. New Jersey*, 207 U. S., 67.

*Hatch vs. Reardon*, 204 U. S., 152.

*Seaboard vs. Seegers*, 207 U. S., 73.

The same appears by the record and the brief of plaintiff in error:

"That in the winter of the years 1903-4 the defendants \* \* \* did \* \* \* cut and remove 2,444,020 feet of timber." \* \* \*

Printed Transcript, folio 2, page 9; folio 45, p. 35; folio 59, p. 42.

"The court \* \* \* decided that the provisions of section 7 \* \* \* as to double damages were penal and therefore that the causes of action were barred by the three-year statute of limitations."

Brief of Plaintiff in Error, pages 38, 36-37-38, citing—

*State vs. Buckman*, *supra*, and

Section 5137, General Statutes Minnesota, 1894.

Respectfully submitted.

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